UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:06CV352-3-W (3:02CR150-5)

KEITH ELLIOT BYRD,)	
Petitioner,)	
v.)	<u>ORDER</u>
UNITED STATES OF AMERICA)	
Respondent.))	

THIS MATTER is before this Court upon a Petitioner's Motion to Vacate (Document No. 1), filed August 14, 2006 and Respondent's Answer and Motion to Dismiss, (Documents No. 6 and 7), filed on November 6, 2006. After careful review of the Respondent's Motion to Dismiss, this Court finds that the United States may be entitled to a summary dismissal of the instant Petition as a matter of law.

PETITIONER BYRD READ THIS:

You now have the opportunity to reply to the Respondent's Motion. You may <u>not</u> allege new facts surrounding the events in question as part of your reply. You should base your reply and argument(s) solely on the matters set forth in your original Habeas Petition and/or those set forth in the Respondent's Motion to Dismiss.

You are further advised that you have thirty (30) days from the filing of this Order in which to file your reply in opposition to the Respondent's Motion to Dismiss. **FAILURE TO RESPOND**

WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO DISMISSAL.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Petitioner has thirty (30) days from the filing of this Order in which to provide a response to the Respondent's Motion to Dismiss. **SO ORDERED.**

Frank D. Whitney

United States District Judge

Signed: November 7, 2006